REMARKS

I. Status of Claims

Claims 1-50 and 53 are pending in this application. No claims have been amended herein.

II. Rejection under 35 U.S.C. § 112

Claims 1-3, 5-26, and 53 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. According to the Examiner, the claims contain subject matter not described in the originally-filed specification in such a way as to reasonably convey to one of ordinary skill in the art that the inventors had possession of the claimed invention. Specifically, the Examiner alleges that there is no support for the amendments to the claims reciting "wherein the weight ratio of said at least one cationic polymer to said at least one amphoteric polymer is greater than or equal to 3:1" or "wherein the weight ratio of said at least one cationic polymer to said at least one amphoteric polymer is greater than or equal to 2:1." Applicants disagree.

First, the Examiner himself has admitted that the written description clearly supports a ratio equal to 2:1, as the Examiner states "[t]he examples herein merely disclose specific examples wherein the ratio[ ] is 2:1." Office Action at 2. Thus, according to the Examiner's own words, there is support for a ratio equal to 2:1. However, it is then concluded that "there is no teach[ing that] the ratio should be greater than, or less than 2:1." *Id.* Applicants respectfully point out that a ratio **less than** 2:1 is

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not being claimed herein, but rather only a ratio **greater than or equal to** 2:1 is claimed.

Furthermore, Applicants submit that there is ample support in the originally-filed specification for the claimed weight ratios greater than 2:1 and greater than or equal to 3:1. With regard to a weight ratio greater than 2:1 or a weight ratio equal to 3:1, both Examples 3 and 4 disclose such ratios. Specifically, Example 3 discloses 0.3% of a 60% solution (i.e., 0.18%) of the cationic polymer hexadimethrine chloride, and 0.15% of a 40% solution (i.e., 0.06%) of the amphoteric polymer polyquaternium-22. Thus, the weight ratio of cationic polymer to amphoteric polymer is 0.18%:0.06%, or 3:1.

Likewise, Example 4 discloses 0.06% of a 60% solution (i.e., 0.036%) of the cationic polymer hexadimethrine chloride, and 0.03% of a 40% solution (i.e., 0.012%) of the amphoteric polymer polyquaternium-22. Thus, in Example 4 the weight ratio of cationic polymer to amphoteric polymer is 3:1. Accordingly, Examples 3 and 4 clearly disclose and provide adequate support for the claimed ratios greater than or equal to 2:1, and equal to 3:1.

With respect to the claimed weight ratio greater than 3.1, this is also reasonably conveyed to one of ordinary skill in the art in the originally-filed specification. As one non-limiting example, page 27, lines 9-11, discloses that "the at least one cationic polymer may be present in the inventive composition in an amount ranging from about 0.01 to about 5% by weight relative to the total weight of the composition. Likewise, page 41, lines 10-12, disclose that "the at least one amphoteric polymer may be present in the inventive composition in an amount ranging from about 0.01 to about 5% by weight relative to the total weight of the

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composition." Therefore, it would be apparent to one of ordinary skill in the art that the cationic polymer could be present, for example in an amount of 5% by weight, while the amphoteric polymer could be present, for example, in an amount of 0.01% by weight. This hypothetical ratio, succinctly conveyed by the specification, is greater than 3:1, and therefore the originally-filed specification provides adequate support for the claimed weight ratio of cationic polymer to amphoteric polymer greater than or equal to 3:1.

Accordingly, the rejection under 35 U.S.C. § 112 is in error and should be withdrawn.

III. Rejection under 35 U.S.C. § 103

The rejection of claims 1-3, 5-26, 50, and 53 under 35 U.S.C. § 103 as allegedly obvious over U.S. Patent No. 5,799,456 to Dubief et al. ("Dubief") in view of U.S. Patent No. 5,656,258 to Cauwet et al. ("Cauwet") and U.S. Patent No. 5,958,392 to Grollier et al. ("Grollier") has been maintained for the reasons of record.

With regard to the newly-added amendment reciting a weight ratio, the Examiner asserts that "both[ ] Grollier et al. and Cauwet et al. teach[ ] the benefit of the combination of cationic polymer[s] and amphoteric polymers, and both[ ] teach a broad range of the ratio of the polymers." Office Action at 4. The Examiner then refers to claim 1 of Cauwet (claiming "a weight ratio synergistically effective") and claim 16 of Grollier (claiming a composition "wherein each of said amphoteric and cationic polymers is present in an amount from 0.5% to 5% by weight"). Applicants respectfully traverse, as the Examiner has failed to establish a *prima facie* case of obviousness.

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In order to establish such a *prima facie* case, the Examiner must, among other things, demonstrate that the cited references teach or suggest all of the claim limitations. M.P.E.P. § 2143. The allegation that claim 1 of Cauwet suggests a ratio greater than or equal to 2:1 falls flat when this claim is read in light of the specification, as claims must be interpreted. Bell Atl. Network Servs. v. Covad Communications Corp., 262 F.3d 1258, 1270 (Fed. Cir. 2001).

Throughout Cauwet's specification, from the Abstract to the Examples, emphasis is placed on the notion that the weight ratio must be "equal to less than 1." *See, e.g.*, Abstract and col. 2, ll. 31-33. Additionally, Cauwet, in Example 1, specifically dismisses the idea that a "synergistic effect," as claimed in claim 1, occurs with a weight ratio greater than 1, concluding from the given experiment that "Lotions III, IV and V for which the (a)(b) was respectively 0.75; 0.5; 0.1 represent a synergistic effect compared to lotions I and II with (a)/(b) polymer ratios of 1.5 and 1." Col. 7, ll. 56-58. Therefore, Cauwet in no way teaches or suggests a weight ratio of at least one cationic polymer to at least one amphoteric polymer greater than or equal to 2:1 or greater than or equal to 3:1, as presently claimed, when the Cauwet reference is considered as a whole.

Moreover, absent Cauwet, the combination of Dubief and Grollier alone do not establish a *prima facie* case of obviousness. In addition to teaching or suggesting all of the elements of the present claims, there must be some suggestion or motivation to modify the reference or combine reference teachings. M.P.E.P. § 2143. Yet the Examiner has failed to establish that any of the cited references, for example Grollier, contain such a suggestion or motivation to modify or combine.

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To the contrary, Grollier, when read as a whole, would lead one of ordinary skill in the art away from making the suggested combination. M.P.E.P. § 2141.02 ("A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.") (emphasis in original). While claim 16 of Grollier does recite a composition "wherein each of said amphoteric and cationic polymers is present in an amount from 0.5% to 5% by weight," one of ordinary skill in the art, when following the teachings of Grollier as a whole, would not have been led to make compositions such as those presently claimed.

More specifically, present claim 1 recites a composition "wherein the weight ratio of said at least one cationic polymer to said at least one amphoteric polymer is greater than or equal to 3:1." Present claim 53 recites a pretreatment composition "wherein the weight ratio of said at least one cationic polymer to said at least one amphoteric polymer is greater than or equal to 2:1; and wherein the pH of said pretreatment composition is greater than or equal to about 4." None of Grollier's 26 examples teaches or suggests these elements. In fact, 25 out of the 26 examples disclose a cationic to amphoteric weight ratio **less than** 2:1. The sole example disclosing a weight ratio of 2.5:1 (Example 20 discloses 0.06% amphoteric polymer and 0.15% cationic polymer), also discloses a pH of 3.2. Therefore, none of 26 specific examples of Grollier teaches or suggests the present invention as claimed.

In light of this disclosure, one of ordinary skill in the art, when combining the Grollier reference with Dubief, as has been suggested by the Examiner, would be led to formulate a composition containing a weight ratio less than 2:1, or, if formulating a

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composition with a weight ratio of 2.5, as taught by Example 20, would ensure the pH of the composition was 3.2.

The Examiner has not demonstrated otherwise, and specifically has not demonstrated why one of ordinary skill in the art, when reading the cited references as a whole, would have been motivated to formulate compositions where the weight ratio of at least one cationic polymer to at least one amphoteric polymer is greater than or equal to 3:1, or, when the pH of the composition is greater than or equal to about 4, a weight ratio greater than or equal to 2:1. Therefore, Applicants respectfully request that the rejection based on these grounds be withdrawn and the application reconsidered.

IV. Conclusion

Applicants respectfully request that this Response be considered by the Examiner, placing claims 1-3, 5-26, 50, and 53 in condition for allowance.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the consideration of the Response would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the Response would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention is neither anticipated nor rendered obvious in view of the prior art references cited against

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this application. Applicants therefore respectfully the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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